

MONTANA LEGISLATIVE HISTORY

Chapter 376 1979

Bill H 619 S _____

Original bill & history ☒ c

H. Committee on Taxation

Hearing Date(s) Feb 16 ☒ c

_____ ☐ c

_____ ☐ c

_____ ☐ c

Date Out Feb 16 ☒ c

S. Committee on Taxation

Hearing Date(s) Mar 08 ☒ c

_____ ☐ c

_____ ☐ c

_____ ☐ c

Mar 08 ☒ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 619
INTRODUCED BY KEMMIS

IN THE HOUSE

February 7, 1979	Introduced and referred to Committee on Taxation.
February 16, 1979	Committee recommend bill do pass as amended. Report adopted.
February 17, 1979	Printed and placed on members' desks.
February 20, 1979	Second reading, do pass.
February 21, 1979	Considered correctly engrossed.
	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 22, 1979	Introduced and referred to Committee on Taxation.
March 9, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 12, 1979	Second reading, concurred in.
March 15, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 16, 1979	Returned from second house. Concurred in as amended.
March 17, 1979	Second reading, amendments adopted.

March 19, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 619
2 INTRODUCED BY Remm

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR GIFTS AND
5 DEVISES TO ESTATES AND FOR THE CREATION AND EXERCISE OF
6 POWERS TO APPOINT TO ESTATES; AND DEFINING "ESTATES"."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Purpose. It is the purpose [this act] to
10 declare that a gift or devise may be made to the estate of a
11 named or otherwise designated person and that a power to
12 appoint to the estate of such a person may be created and
13 exercised in order to ensure that persons who make inter
14 vivos or testamentary conveyances that are subject to the
15 law of Montana can effectively use forms of conveyances that
16 are commonly used in other states to qualify for the federal
17 estate and gift tax marital deductions.

18 Section 2. Conveyances to an estate. Unless a contrary
19 intention appears, a devise, as defined in 72-1-103(8), or
20 an inter vivos conveyance of a property interest to the
21 estate of a named or otherwise designated person passes the
22 interest as if the interest had been owned by that person.
23 The interest may pass to the heirs of that person, may be
24 used to satisfy devises made in his will, or may be used to
25 satisfy claims for debts or taxes.

1 Section 3. Creation or exercise of a power to appoint
2 to an estate. A person may be given a power to appoint a
3 legal or equitable interest in property to his own estate by
4 will or deed. The donee of such a power is considered to
5 have a general power of appointment exercisable in favor of
6 any person. Permissible exercise of the power as created may
7 include but is not limited to direction to the personal
8 representative of the donee to administer the interest as if
9 it were an interest in the property of the donee, direction
10 to the personal representative to use the interest to
11 satisfy the donee's devises or claims for debts and taxes,
12 or appointment of the interest to any person to whom the
13 donee might give or devise his own property.

14 Section 4. Estate defined. The word "estate" as used
15 in [this act] means persons who may take interests in
16 property.

17 Section 5. Severability. If a part of this act is
18 invalid, all valid parts that are severable from the invalid
19 part remain in effect. If a part of this act is invalid in
20 one or more of its applications, the part remains in effect
21 in all valid applications that are severable from the
22 invalid applications.

-End-

HOUSE TAXATION COMMITTEE

46th Legislature

Rep. E.N.Dassinger, Vice-chairman, called the committee to order at 8:45 a.m., February 16, 1979, in room 434, Capitol Building, Helena. Rep. Fagg was absent. All other members were finally present. Randy McDonald, staff attorney was present.

House Bills 581, 582, 619 were to be heard.

Rep. Orren Vinger, District #3, Wolf Point, sponsor of HB 581, explained this bill would change the due date for special fuel tax returns from the 25th of each month to the last day of each month. Because of post office service delays penalties for late filing had been imposed.

HOUSE BILL

581 Norris Nichols, administrator of Motor Vehicle Tax Division, DoR, said they consider the date of the post office cancellation as filing date. Other states have different dates and grace periods. Every state is different. They have no objection to the change. On page 1, line 5 following "the", insert "annual and"; and on line 22, change "25" to "31". The user shall make an annual report. Whatever is done, make it consistent throughout the bill.

Rep. Vinger closed saying HB 581 makes filing dates more consistent. He wants a committee bill showing the state penalty at 5% as is the federal penalty. At the moment the state penalty is 25% which they think is too high.

Questions from the committee -

Rep. Williams asked if there is no provision for a grace period in the law at the present time. Mr. Nichols said there is none.

Rep. Hirsch asked if the report would be on the fuel up to that date. Mr. Nichols said the report is for the previous month.

Rep. Fabrega asked what happens if for good cause - bookkeeper is ill or if records have been lost due to an act of God - will there be a penalty? Sometimes it is the accountant's fault.

Rep. Dassinger said the postoffice stamp date is considered the filing date.

Rep. Daniel Kemmis, District #91, Missoula, sponsor, explained HB 619 is to clear up the law in Montana which makes estate planning difficult. Estate planning regarding a marital deduction requires some type of planning in order to qualify under federal estate tax provisions. There are

HOUSE BILL

619 limitations on how to qualify. If a gift or devise is made to the surviving spouse and for them is really only a life estate to the spouse, if that gift should end up with somebody besides the surviving spouse, they can't qualify for the deduction. In order to meet this requirement, there are certain kinds of devises made to the surviving spouse so can use money for life but the remainder goes to the estate which qualifies for marital deduction. Because of a supreme court decision it isn't clear in Montana that you can devise to an estate.

Professor Lester R. Rusoff, law school in Missoula, supports HB 619, said an estate trust couldn't be used in Montana. Estate trusts and power of appointment trust are used in other states. They are used to qualify marital deductions. HB 619 is designed to make it clear that estates in Montana can take advantage of the federal estate tax marital deduction. They are challenging on the federal marital deduction in court now. This bill will allow estate planners in Montana be able to do what estate planners in other states can do.

There were no opponents.

Rep. Kemmis closed saying to see amendments.

Questions from the committee -

Rep. Williams asked the effect on inheritance tax. Rep. Kemmis said the federal estate tax might have some effect. Rep. Williams asked you are talking about federal deductions? Rep. Kemmis said Yes. He didn't know of any constitutional problems in connection with the severability paragraph.

Rep. Reichert asked if this legislation apply to an heir in an accident death of both husband and wife where both were killed. Professor Rusoff said No. If the wife survives the husband by 5 days, she would take under a will. It is commonly put into a will the presumption that the other spouse does not survive, the marital deduction will be available to the estate of the person making the will. A pass-through trust may result in the estate tax on the death of the deviser.

"Power of appointment" - In the case where a husband has property and he dies first, part of his estate will be put into a trust and the wife will get the income as long as she lives and the property will go to whomever she names or to their issue. A trust has to be broad enough to put into her own estate. The part deductible when the husband dies is taxed when the wife dies. One-half when he dies, one-half when the wife dies so the tax will be on no more than 100%. 50% when he dies and 50% when she dies - has to be broad enough to allow a devise to be made to a dead person's estate.

Rep. Kemmis explained estate planning is done in order to make sure that the surviving spouse is hit with as low an estate tax as possible, and one of the means of doing this is through an estate trust. To keep the federal estate tax low, want to be able to create an estate trust. Have to devise property not to a person, but to the estate of that person. The question is whether you can devise property to the estate of a person. HB 619 allows people to do the kind of estate planning that they do everywhere else.

Rep. Underdal mentioned tenants in common can provide for income to the survivor, and make a trust to the children.

Rep. Reichert asked why this relates to marital exemption.

Rep. Williams asked if HB 619 is to make it so Montana is conforming to what other states are doing. Rep. Kemmis said Yes.

Rep. Johnson said Montana has an inheritance tax. Prof. Rusoff said Montana's death tax is primarily an estate tax. Montana's estate tax is designed to take advantage of a federal estate tax. Then there is a Montana estate tax that

comes into play, Montana inheritance tax has been large enough so that the Montana estate tax was seldom paid. Montana estate tax will be more often paid. There is a provision for marital deduction in Montana inheritance law but it is not spelled out. The problem with the federal estate tax is because Montana inheritance tax provision is much briefer and doesn't use the same provisions.

Rep. Fabrega asked Mr. Stohl why Montana was deriving most of its income from death tax rather than inheritance tax? This had to do with the probate in Montana.

Prof. Rusoff said this will not affect Montana estate tax - it is only for federal estate tax. Don't expect to have any affect over Montana estate tax. If federal estate tax will affect amount of credit for state tax and Montana estate tax is designed to take advantage of the federal credit, it may be possible that if the federal estate tax is lessened by taking advantage of the marital deduction, the Montana inheritance tax would be increased. If the federal estate tax is reduced, the Montana tax will be also reduced. If federal estate tax is reduced, it would increase Montana inheritance tax maybe.

Rep. Burnett, sponsor of HB 582, left to get some more material, so committee went into executive session until his return. Rep. Huennekens now chairman.

EXECUTIVE SESSION

HOUSE BILL 619 - Rep. Fabrega moved HB 619 DO PASS with proposed amendments. Page 1, line 9, following "the", strike "of"; following "purpose" insert "of". Page 2, line 6 following "person", strike "Permissable", insert "Permissible". There were no Noes. Reps. Nordtvedt, Burnett, Lien, Fagg were absent.

HOUSE BILL 581 - Rep. Vinger moved HB 581 DO PASS AS AMENDED. Discussion was had on the variation post offices use in stamping cancellation dates on letters. There were no Noes - same 4 absent.

Rep. Burnett returned to the committee and hearing proceeded.

Rep. Jim Burnett, District #71, Luther, sponsor of HB 582, explained this bill would exempt from property taxation airplanes built before 1936 which are not regularly used for transportation purposes.

HOUSE BILL 582 Al C. Newby, Montana Chapter of Antique Aircraft Association, Belgrade, supports HB 582. He passed around to the committee a magazine article on antique aircraft and a postcard. He would like to make antique aircraft on an equal basis with antique automobiles. There are 15 antique aircraft in the state now but very few are flying. His testimony attached proposes to change to over 40 years instead of using the date of 1936.

Mike Ferguson, Montana Aeronautics Board, Helena, supports HB 582, feels very few, 5 or 6, antique aircraft are registered in Montana that are flying. A lot are laying around in barns and garages. No blue book goes back to properly assess antique aircraft - so they don't have much impact on counties' income.

adopting new language on page 2, following line 11, see copy of committee report for accepted amendments.

Senator Towe then Moved SB389 Do Pass As Amended. The motion carried.

They then took up HB318 and after brief discussion on the bill, agreed to move it out.

Senator Watt Moved HB318 Be Concurred In. Motion carried.

They discussed HB457 as well and proposed several amendments, to include school districts in the bill which calls for the Department of Revenue to give cities and towns a breakdown of the tax dollars. Senator Towe Moved to Amend HB457. Motion carried.

Senator Watt Moved HB 457 As Amended, Be Concurred In. Motion carried. Note for record, "No" votes by Senators Manley, Roskie, Goodover and Turnage.

Next up for discussion was Senate Bill 521. Amendments proffered were discussed and agreed upon. Senator Towe Moved to Adopt Amendments to SB521. Motion Carried.

Senator Manley then Moved SB521 Do Pass As Amended. Motion was carried.

Following disposition of this bill, conducted before 8 o'clock, the committee prepared to hear the bills for the day.

CONSIDERATION OF HOUSE BILL 619: Representative Kemmis introduced this bill which would allow gifts or devises made to an estate by a named person. He said in estate planning it is a practice in order to qualify for federal marital deductions to establish what are called powers of appointment. The problem in Montana, because of a Supreme Court decision, is that it is unclear whether you can defise property to an estate. He next introduced Professor Russoff of the University Law School, who also spoke to the committee in regard to estate planning. He said sometimes he came across a statute that might produce some bad results for Montana taxpayers and he felt this statute would give them benefit. He said the basic idea is that people trying to minimize federal estate liability try to take advantage of the marital tax deduction. Mr. Norris gave some supporting testimony as well, saying in 1976 the federal government changed the law on marital deductions, allowing an increase and he said this is the single item that saves most taxes for an individual.

The Chairman called for other proponents or opponents, and there being none, permitted questions of the committee. Mr. Stoll, representing the Department of Revenue, stated they had no problems with the bill, and further that there had been challenges regarding regarding the devise. The Chairman said if the committee felt they wished to move the bill they should consider an immediate effective date. This amendment was adopted by the committee. Senator Towe Moved to Adopt Amendments, see copy of committee report, attached.

Senator Norman Moved HB619 As Amended Be Concurred In. Motion was carried.

STANDING COMMITTEE REPORT

March 8

19 73

President

Taxation

House

Bill No. 619

use Bill 619 - Kennis (Norman)

House

Bill No. 619

respectfully report as follows: That
third reading bill, be amended as follows:

. Title, line 6.
following: "ESTATES;"
strike: "AND"
following: " 'ESTATES' "
insert: ", AND PROVIDING AN EFFECTIVE DATE"

. Page 2, line 7.
following: "limited to"
insert: ";
(1)"

. Page 2, line 13.
following: "donee"
strike: ", "
insert: ";
(2)"

DO NOT
PASS

CONTINUED

Chairman

March 3 1979

Page 2 House Bill 619 Taxation Committee

4. Page 2, line 12.

Following: "taxes"

Strike: ", "

Insert: ";

(3)"

5. Page 2, line 23.

Following: line 22

Insert: "Section 6. THERE IS A NEW MCA SECTION THAT READS:
Effective date. This act is effective on passage and approval."

And, as so amended,

BE CONCURRED IN

JEAN A. TURNAGE - CHAIRMAN

Date Mar. 2, 1979

ROLL CALL

SENATE TAXATION COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
SEN. GOODOVER (Vice Chairman)	✓		
SEN. BROWN	✓		
SEN. HAGER	✓		
SEN. MANLEY	✓		
SEN. MANNING	✓		
SEN. MCCOLLUM	✓		
SEN. NORMAN	✓		
SEN. ROSKIE	✓		
SEN. SEVERSON	✓		
SEN. TOWE	✓		
SEN. WATT	✓		
CHAIRMAN TURNAGE	✓		

Each Day Attach to Minutes.

HOUSE BILL NO. 619

INTRODUCED BY KEMMIS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR GIFTS AND
DEVISES TO ESTATES AND FOR THE CREATION AND EXERCISE OF
POWERS TO APPOINT TO ESTATES; AND DEFINING 'ESTATES'; AND
PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. It is the purpose of this act to declare that a gift or devise may be made to the estate of a named or otherwise designated person and that a power to appoint to the estate of such a person may be created and exercised in order to ensure that persons who make inter vivos or testamentary conveyances that are subject to the law of Montana can effectively use forms of conveyances that are commonly used in other states to qualify for the federal estate and gift tax marital deductions.

Section 2. Conveyances to an estate. Unless a contrary intention appears, a devise, as defined in 72-1-103(8), or an inter vivos conveyance of a property interest to the estate of a named or otherwise designated person passes the interest as if the interest had been owned by that person. The interest may pass to the heirs of that person, may be used to satisfy devises made in his will, or may be used to

satisfy claims for debts or taxes.

Section 3. Creation or exercise of a power to appoint to an estate. A person may be given a power to appoint a legal or equitable interest in property to his own estate by will or deed. The donee of such a power is considered to have a general power of appointment exercisable in favor of any person. ~~Permissible~~ PERMISSIBLE exercise of the power as created may include but is not limited to:

(1) direction to the personal representative of the donee to administer the interest as if it were an interest in the property of the donee;

(2) direction to the personal representative to use the interest to satisfy the donee's devises or claims for debts and taxes;

(3) or appointment of the interest to any person to whom the donee might give or devise his own property.

Section 4. Estate defined. The word "estate" as used in this act means persons who may take interests in property.

Section 5. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.